

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

FREDDY MARTIN DAVILA,

Defendant and Appellant.

H029549

(Santa Clara County

Super. Ct. No. CC598320)

Defendant Freddy Martin Davila was convicted by plea of four felonies, all committed while he was driving. His conviction resulted in incarceration, formal probation, and lifetime revocation of his driving privileges. On appeal, defendant challenges a probation condition that requires him to complete a driver education program, which he characterizes as unreasonable. We reject defendant's challenge and affirm the judgment.

**BACKGROUND**

In July 2005, defendant was charged in a six-count felony complaint with five felonies and one misdemeanor: Count 1, assault on a peace officer with a deadly weapon, in violation of Penal Code section 245, subdivision (c); Count 2, hit and run resulting in injury or death, in violation of Vehicle Code section 20001, subdivision (a)/(b)(1); Counts 3 and 4, driving under the influence of alcohol and drugs and causing

injury, in violation of Vehicle Code section 23153, subdivisions (a) and (b); Count 5, reckless driving, in violation of Vehicle Code section 2800.2, subdivision (a); and Count 6, resisting, delaying, or obstructing an officer, a misdemeanor violation of Penal Code section 148, subdivision (a)(1).

### *Plea*

In September 2005, defendant entered a plea of no contest to counts 1, 2, 4, and 5. Time for sentencing was “not waived,” and defense counsel requested that the probation department prepare “a short report for restitution and credits only.”

A probation report was prepared, which recommended the grant of formal probation with various conditions, including the one challenged here: “13. The defendant shall enter into and complete the Multiple Offender Program.”

### *Sentencing*

In October 2005, the trial court conducted defendant’s sentencing hearing.

At the beginning of the hearing, this exchange took place: “[Defense Counsel]: First of all, there is a lifetime ban on Mr. Davila having his driver’s license, so I’m not really seeing the need for number 13. It’s just the part of the multiple offender program. [¶] [Prosecutor]: With all due respect to counsel, even though his license is suspended, he might nonetheless end up driving; people often do. The program would still be useful.” After the court clarified the offense and the “lifetime ban,” the prosecutor continued: “The multiple offender program is the element of driver education. I have known people with suspended licenses to drive nonetheless. Therefore, I think the defendant should complete it. I know he would never willingly violate the law by driving with a suspended license, but even so, the educational benefit might be of use.”

Thereafter, the court suspended the imposition of sentence and placed defendant on three years of formal probation. Defendant was ordered to serve 363 days in county jail. The court advised defendant: “This conviction is going to be reported to the

Department of Motor Vehicles, and your driving privilege must be revoked pursuant to [Vehicle Code section] 13351.5.” The court imposed various probation conditions, including that defendant “[e]nter and complete the multiple offender program.”

### ***Appeal***

In November 2005, defendant brought this appeal. His sole contention here is that the trial court acted unreasonably in ordering him into the multiple offender program, since his driving privileges have been revoked for life.

## **DISCUSSION**

To provide the proper framework for our discussion, we first set forth the applicable legal principles governing probation. Against that framework, we analyze the particular probation condition challenged here.

### **I. General Principles**

“Probation is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes rehabilitation.” (*People v. Welch* (1993) 5 Cal.4th 228, 233.)

“Probation is governed by statute.” (*People v. Balestra* (1999) 76 Cal.App.4th 57, 64.) Penal Code section 1203.1, subdivision (j), provides that a court granting probation “may impose and require any ... reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer...” The statute both “furnishes and limits” the court’s authority to impose probation conditions. (*People v. Cervantes* (1984) 154 Cal.App.3d 353, 356.)

“The sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and what conditions should be imposed.” (*People v.*

*Welch, supra*, 5 Cal.4th at p. 233.) That broad discretion permits trial courts “to fashion and impose conditions of probation appropriate to individual cases.” (*People v. Birkett* (1999) 21 Cal.4th 226, 235.) Among other things, the court may “impose conditions to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1.” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120-1121.)

The court’s discretion is not unbounded, however. (*People v. Carbajal, supra*, 10 Cal.4th at pp. 1120-1121; *People v. Cervantes, supra*, 154 Cal.App.3d at p. 358.) Its “discretion must be exercised in a reasonable manner and is limited by certain constitutional safeguards.” (*People v. Beach* (1983) 147 Cal.App.3d 612, 620.)

#### **A. Reasonableness**

Our high court has articulated a three-part test for evaluating whether a probation condition is reasonable. (See *In re Bushman* (1970) 1 Cal.3d 767, 777 (*Bushman*), disapproved on other grounds in *People v. Lent* (1975) 15 Cal.3d 481, 486, fn. 1 (*Lent*); see *Lent*, at p. 486; see generally, Cal. Criminal Law, Procedure and Practice (Cont.Ed.Bar 2006) Probation, § 38.26, p. 1195.) As established by *Bushman* and *Lent*, a probation condition is unreasonable only “if it (1) has no relationship to the crime of which the defendant is convicted, (2) relates to conduct that is not itself criminal, [and] (3) requires or forbids conduct that is not reasonably related to future criminality.” (*Bushman*, at p. 777, as clarified in *Lent*, at p. 486, fn. 1.) “The test is clearly in the conjunctive, that is, the three factors must all be found to be present in order to invalidate a condition of probation.” (*People v. Balestra, supra*, 76 Cal.App.4th at p. 65, fn. 3. See *Lent*, at p. 486, fn. 1.)

#### **B. Constitutionality**

In addition to passing the test for reasonableness, probation conditions that implicate constitutional rights must pass constitutional muster as well. (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084; *People v. Delvalle* (1994) 26 Cal.App.4th 869, 879.)

Probation conditions thus must be narrowly tailored and sufficiently precise to avoid unconstitutional overbreadth and vagueness.

### ***C. Forfeiture of Objections***

As California Supreme Court precedent teaches, “failure to timely challenge a probation condition on ‘*Bushman/Lent*’ grounds in the trial court waives the claim on appeal.” (*People v. Welch, supra*, 5 Cal.4th at p. 237.) “A timely objection allows the court to modify or delete an allegedly unreasonable condition or to explain why it is necessary in the particular case. The parties must, of course, be given a reasonable opportunity to present any relevant argument and evidence. A rule foreclosing appellate review of claims not timely raised in this manner helps discourage the imposition of invalid probation conditions and reduce the number of costly appeals brought on that basis.” (*Id.* at p. 235. Cf., *People v. Jungers* (2005) 127 Cal.App.4th 698, 703 [defendant preserved his challenge for appeal “by bringing a motion to modify or clarify the court’s order”].)

## **II. Analysis**

With the foregoing legal principles in mind, we apply those that are pertinent to the probation condition challenged here. At the outset, we observe, neither constitutionality nor forfeiture is at issue in this appeal. We therefore turn directly to the question of reasonableness, first setting forth the applicable standard of review.

### ***A. Review Standard***

We review the trial court’s imposition of probation conditions for an abuse of discretion. (*People v. Carbajal, supra*, 10 Cal.4th at p. 1121; *People v. Balestra, supra*, 76 Cal.App.4th at p. 65.) We thus take a “highly deferential” approach in assessing the challenged condition. (*People v. Balestra*, at p. 63.)

## ***B. Reasonableness***

At issue here is defendant's challenge to the probation condition requiring him to enter and complete the multiple offender (driver education) program. It is properly characterized as "a condition of probation which requires [] conduct which is not itself criminal...." (*Lent, supra*, 15 Cal.3d at p. 486.) Such a condition will be upheld "if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality." (*Ibid.*) Stated another way, the question is whether "the conditions imposed, objectively viewed, bear a reasonable relationship to the crime or the rehabilitation of the offender." (*People v. Torres* (1997) 52 Cal.App.4th 771, 776 [affirming probation condition requiring drug offender to waive custody credits].)

### *1. Relationship to Defendant's Crimes*

As the People observe: "All of appellant's offenses involved driving a vehicle while under the influence of alcohol." The requirement of attending a driver education program thus plainly relates to the crimes of which defendant was convicted: assault with a deadly weapon (his car), hit and run, driving under the influence, and reckless driving. In any event, the "trial court may properly go beyond the exact confines of the current offense to consider all the relevant circumstances regarding the probationer." (*People v. Patillo* (1992) 4 Cal.App.4th 1576, 1580, disapproved on other grounds in *People v. Welch, supra*, 5 Cal.4th at p. 237.) That exercise was unnecessary here, however, given the direct relationship between defendant's crimes and the driver education requirement that the court imposed on him.

In this case, then, the challenged probation condition satisfies at least one prong of the three-part test for reasonableness: a "relationship to the crime of which the defendant is convicted...." (*Bushman, supra*, 1 Cal.3d at p. 777.) Any one prong is sufficient to affirm a condition of probation. (*People v. Balestra, supra*, 76 Cal.App.4th at p. 65, fn. 3; see *Lent, supra*, 15 Cal.3d at p. 486, fn. 1.) The probation condition thus must be affirmed on this ground alone.

Moreover, in this case, there are also other reasons to uphold the challenged condition.

## 2. *Deterrence of Future Criminality*

Defendant's fundamental objection is that it is unreasonable to require driver education because he can no longer legally drive. But as the prosecutor aptly commented at the sentencing hearing, the lack of driving privileges does not always deter a person from driving. The validity of the prosecutor's concern is reflected in a statement by this court in *People v. Chardon* (1999) 77 Cal.App.4th 205. As we observed there: "Defendant repeatedly drove even though her license had been suspended...." (*Id.* at p. 217.)

In *Chardon*, the defendant was granted probation after being convicted of false personation and driving with a suspended license. (*People v. Chardon, supra*, 77 Cal.App.4th at p. 208.) This court rejected her claim that "the court abused its discretion in imposing a probation search condition." (*Ibid.*) We stated: "The trial court could have concluded that a search and seizure condition would help to reform and rehabilitate defendant by discouraging her from attempting to conceal her identity in the future either by falsely denying possession of identification or by becoming more sophisticated in her criminality and producing false identification. We cannot say that the trial court abused its discretion in reaching such a conclusion." (*Id.* at pp. 217-218.)

Other cases likewise have affirmed probation conditions on the basis that they might deter future criminality. (See, e.g., *People v. Henson* (1991) 231 Cal.App.3d 172, 182 [an "AIDS education order" was "a reasonable attempt to deter a woman who was not known to have used intravenous drugs but reasonably might be considered at risk"]; *People v. Patillo, supra*, 4 Cal.App.4th at p. 1580 [same]; *Brown v. Superior Court* (2002) 101 Cal.App.4th 313, 319 ["the imposition of periodic polygraph examinations in

connection with Brown’s stalking therapy program is reasonably related to the crime of which Brown was convicted and to possible future criminality”].)

Here, the trial court could reasonably conclude that a driver education program might benefit defendant by discouraging him from driving illegally. (*People v. Chardon, supra*, 77 Cal.App.4th at pp. 217-218.) “If a program of [] education dissuades defendant from [] criminal behavior, the court will have succeeded, albeit to a small extent, in ... reforming the probationer.” (*People v. Patillo, supra*, 4 Cal.App.4th at pp. 1580-1581.)

### *3. Protection of Public Safety*

Finally, we observe, the protection of public safety is a proper consideration in fashioning probation conditions. As the Legislature has declared: “The safety of the public [] shall be a primary goal through the enforcement of court-ordered conditions of probation....” (Pen. Code, § 1202.7. See *People v. Carbajal, supra*, 10 Cal.4th at p. 1120.) An education program that dissuades a defendant from criminal behavior may serve to protect the public. (*People v. Patillo, supra*, 4 Cal.App.4th at pp. 1580-1581.)

In this case, requiring driver education serves the ends of public safety. It may encourage defendant to honor his license revocation; alternatively, if he does get behind the wheel, the program may make him a safer driver. In either case, public safety benefits.

### *c. Conclusion*

As explained above, we review the challenged probation condition for an abuse of discretion. The question for this court is whether the trial court imposed “a condition of probation that is arbitrary, capricious or exceeds the bounds of reason under the circumstances.” (*People v. Jungers, supra*, 127 Cal.App.4th at p. 702.) The trial court did not so do here. To the contrary, the challenged probation condition is reasonable: it relates to defendant’s crimes, it supports his rehabilitation, and it promotes public safety. We therefore uphold the challenged probation condition.

**DISPOSITION**

The judgment of conviction is affirmed.

---

McAdams, J.

WE CONCUR:

---

Bamattre-Manoukian, Acting P.J.

---

Mihara, J.